

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner lives with her husband and their two minor children. They constitute a four person household.
2. The petitioner's youngest child, aged five years, has been attending full-time child care. Petitioner received a 65% child care subsidy from the CDD for the period ending April 25, 2009.
3. The petitioner and her husband are partners in the family dairy farm. Her husband works full-time on the dairy

farm. Petitioner works full-time for a local company and does some free-lance computer work on the side.

4. A Childcare Subsidy Redetermination Letter and Form were sent to petitioner on February 23, 2009 by the local Family Center.

5. On March 18, 2009, the petitioner sent the completed Application, supporting documentation, and cover letter to her local Family Center. The supporting documentation included:

- a. 2008 Federal Income Tax Return.
- b. Three current paystubs for petitioner showing bi-weekly gross wages of \$2,200.
- c. Milk checks from Agrimark from 2008 and 2009 showing the decrease in payments from 2008 to 2009.
- d. Milk price forecasts for 2009.

6. In her March 18, 2009 letter, petitioner asked her local Family Center to consider that the 2008 tax return was not representative of her family's 2009 income because milk prices had decreased while expenses had stayed the same; she expected a negative income for 2009. As an example, she contrasted the March 2008 milk checks of \$23,872.16 to the March 2009 milk checks of \$15,187.52.

7. During 2008, petitioner contracted with C.R. as a consultant and received self-employment income from C.R. In

2009, petitioner became a paid employee of C.R. and no longer had self-employment income from C.R. As a result, the 2008 Schedule C for petitioner's self-employment does not accurately reflect her 2009 economic situation.

8. The local Family Center sent a Closure Notice on April 10, 2009 to petitioner that her child care subsidy would close April 25, 2009 because she was over-income for a subsidy.

9. Petitioner submitted a statement dated April 30, 2009 from her accountant, R.M. It does not appear that the accountant statement was considered by CDD. That statement showed 2009 year to date income through April 30, 2009 as follows:

Farm Loss	(20,148)
Petitioner's wages	19,800
Petitioner's self-employ	<u>2,500</u>
Total Income	\$2,152

10. Petitioner filed a request for fair hearing on May 1, 2009.

11. On June 26, 2009, the Commissioner's Review upheld the closure stating that petitioner's income alone put the family over the income guidelines. The Commissioner incorrectly attributed income to petitioner by adding her

2008 self-employment income from C.R. to her 2009 wages from C.R.¹

ORDER

The Department's decision is reversed and remanded for a calculation of current income.

REASONS

Vermont enacted a child care subsidy program. The purposes of the child care subsidy program are set out in 33 V.S.A. § 3512 as follows:

(a) A child care services program is established to subsidize, to the extent that funds permit, the costs of child care for families that need child care services in order to obtain employment, to retain employment. . .

(b) The subsidy authorized by this section shall be on a sliding scale basis. The scale shall be established by the commissioner, by rule, and shall bear a reasonable relationship to income and family size. The lower limit of the fee scale shall include families whose gross income is up to and including 100 percent of the federal poverty guidelines. The upper limit of the fee scale shall be neither less than 82.5 percent nor more than 100 percent of the state median income, adjusted for the size of the family. The scale shall be structured so that it encourages employment.

¹ The petitioner's income was calculated by taking the net business profit for 2008 of \$33,421 and adding depreciation of \$3,343 for an annual income of \$36,764 or \$3,063 per month. The monthly self-employment income was then added to petitioner's wages of \$2,200 bi-weekly or \$4,730 per month for a total monthly income of \$7,766. In addition, the farm income was calculated from the 2008 tax information by starting with a loss of \$1,518 and adding depreciation of \$42,073 for a yearly income of \$40,555 or \$3,379.58 per month.

The commissioner has promulgated regulations entitled Child Care Financial Assistance Program Regulations (CCFA). CCFA I.B.18 defines gross income as all income except for income excluded by the regulations.

CCFA II.B.2 sets out the income eligibility requirements. The pertinent sections state:

The income schedule, on a sliding fee scale, is based on actual monthly gross income and the number of family members. . . .

Gross income includes all payments from any source received by a primary caretaker(s) or their child (ren), with the exception of children's wages. Income received from the following sources is excluded in determining income eligibility:

. . .14. Self-employment business expenses other than depreciation charges, Section 179, per current IRS procedures.

The key issue is how to determine the "actual monthly gross income" of petitioner's household. If petitioner and her husband worked as employees, calculating their actual gross monthly income would be straightforward and fairly simple. But, their household income incorporates a determination of the farm's income and its impact upon the total household income. The regulations do not give a great deal of guidance and do not specifically address situations

in which a prior year's financial situation does not reflect the current year's financial situation.

Petitioner argues that the Department did not correctly calculate her household's actual income. Her argument is predicated on the Department's failure to consider the impacts of falling milk prices on their 2009 income and the Department's calculation of farm income, depreciation, and other business expenses.

Petitioner is correct that the Department cannot only rely on the 2008 information. CCFA II.B.2 states that the Department will use the household's **actual income**. Actual is defined as "1. Existing and not merely potential or possible. See synonyms at **real**. 2. Being, existing, or acting at the present moment; current."² In light of the legislative mandate to help households maintain employment by subsidizing child care, the Department needs to look at current information when informed of major changes affecting the use of a prior year's financial information.

The petitioner argues that the household's income needs to include consideration of the business expenses of the farm to determine actual income. The petitioner cites to Fair

²The American Heritage dic-tion-ar-y of the English Language, 4th ed., Houghton Mifflin Company (2006) at page 18.

Hearing No. 11,279 in which the parents had two businesses. One business ran at a loss; the other made a profit. The Department did not consider the loss from the first business as a factor in determining the household's actual income. The Board reversed the Department in that decision. On pages 3-4, the Board stated:

Even had Business B been the sole source of their income, the Department's reading of its own regulation to eliminate joint consideration of the two businesses when determining the family's income is arbitrary and not in any way designed to arrive at the family's actual total monthly income.

The same holds true here.

The Department argues that the farm income need not be considered because petitioner's income alone is over the income guidelines. The problem with this reasoning is that it does not give an accurate reading of the household's actual income. For example, if petitioner's income were under the guidelines, the Department would be looking at the farm income to determine the household's eligibility.

The petitioner argues that the Department has not correctly analyzed the farm's income, in particular the type of information in Schedule C which sets out the farm's income after taking into account business expenses. It is not necessary to reach this issue since the matter is being

remanded to the Department to calculate the household's actual income looking at the changes from 2009.³

The petitioner asks that the household be found eligible based on the information from their accountant. There is not sufficient information in the record to do so, but this information should now be considered by the Department.

Based on the above, the Department's decision is reversed and remanded for a calculation of the household's actual income. 3 V.S.A. § 3091(d).

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³ The parties should consider meeting to review the information and go through the appropriate calculations.